

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

RUBY C. TUCKER,

Case No.: CI 13 1976

Plaintiff,

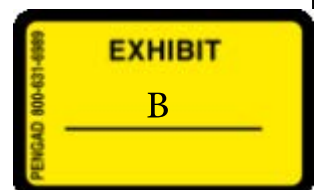
vs.

AMENDED COMPLAINT AND
WAIVER OF PANEL REVIEWALBERT J. HALLS, M.D., PEOPLE'S
HEALTH CENTER, JEFFREY D.
MATTHES, M.D., DONALD H. BREIT,
M.D., LINCOLN RADIOLOGY GROUP,
P.C., PATRICK A. KEELAN, M.D.,
PATHOLOGY MEDICAL SERVICES,
P.C., CAROLYN S. CODY, M.D. and
NEBRASKA SURGICAL SPECIALISTS,
L.L.C. d/b/a LINCOLN BREAST CENTER,

Defendants.

PLAINTIFF STATES:

1. Plaintiff is a resident of Lincoln, Lancaster County, Nebraska.
2. Defendant Albert J. Halls, M.D. is a resident of Lincoln, Lancaster County, Nebraska, and at all times material hereto was duly licensed and authorized to practice medicine in the State of Nebraska, holding himself out to the public as a physician specializing in family medicine.
3. Defendant People's Health Center is a corporation organized and existing under the laws of the State of Nebraska, with its principal place of business in Lincoln, Lancaster County, Nebraska.
4. That at all times material hereto, Defendant Albert J. Halls, M.D. was acting for and on behalf of Defendant People's Health Center, and within the scope and course of his employment with Defendant People's Health Center. The acts of negligence of Defendant Albert



J. Halls, M.D. are imputed to Defendant People's Health Center under the doctrine of respondeat superior.

5. Defendant Jeffrey D. Matthes, M.D. is a resident of Lincoln, Lancaster County, Nebraska, and at all times material hereto was duly licensed and authorized to practice medicine in the State of Nebraska, holding himself out to the public as a physician specializing in radiology.

6. Defendant Donald H. Breit, M.D. is a resident of Lincoln, Lancaster County, Nebraska, and at all times material hereto was duly licensed and authorized to practice medicine in the State of Nebraska, holding himself out to the public as a physician specializing in radiology.

7. Defendant Lincoln Radiology Group, P.C. is a corporation organized and existing under the laws of the State of Nebraska, with its principal place of business in Lincoln, Lancaster County, Nebraska.

8. That at all times material hereto, Defendants Jeffrey D. Matthes, M.D. and Donald H. Breit, M.D. were acting for and on behalf of Defendant Lincoln Radiology Group, P.C., and within the scope and course of their employment with Defendant Lincoln Radiology Group, P.C.. The acts of negligence of Defendants Jeffrey D. Matthes, M.D. and Donald H. Breit, M.D. are imputed to Defendant Lincoln Radiology Group, P.C. under the doctrine of respondeat superior.

9. Defendant Patrick A. Keelan, M.D. is a resident of Lincoln, Lancaster County, Nebraska, and at all times material hereto was duly licensed and authorized to practice medicine in the State of Nebraska, holding himself out to the public as a physician specializing in pathology.

10. Defendant Pathology Medical Services, P.C. is a corporation organized and existing under the laws of the State of Nebraska, with its principal place of business in Lincoln, Lancaster County, Nebraska.

11. That at all times material hereto, Defendant Patrick A. Keelan, M.D. was acting for and on behalf of Defendant Pathology Medical Services, P.C., and within the scope and course of his employment with Defendant Pathology Medical Services, P.C. The acts of negligence of Defendant Patrick A. Keelan, M.D. are imputed to Defendant Pathology Medical Services, P.C. under the doctrine of respondeat superior.

12. Defendant Carolyn S. Cody, M.D. is a resident of Lincoln, Lancaster County, Nebraska, and at all times material hereto was duly licensed and authorized to practice medicine in the State of Nebraska, holding herself out to the public as a physician specializing in general surgery.

13. Defendant Nebraska Surgical Specialists, L.L.C. d/b/a Lincoln Breast Center is a corporation organized and existing under the laws of the State of Nebraska, with its principal place of business in Lincoln, Lancaster County, Nebraska.

14. That at all times material hereto, Defendant Carolyn S. Cody, M.D. was acting for and on behalf of Defendant Nebraska Surgical Specialists, L.L.C. d/b/a Lincoln Breast Center and within the scope and course of her employment with Defendant Nebraska Surgical Specialists, L.L.C. d/b/a Lincoln Breast Center. The acts of negligence of Defendant Carolyn S. Cody, M.D. are imputed to Defendant Nebraska Surgical Specialists, L.L.C. d/b/a Lincoln Breast Center under the doctrine of respondeat superior.

15. At all times material hereto, Defendants were qualified under the Nebraska Hospital Medical Liability Act, Neb. Rev. Stat. §44-2801, et seq. In accordance with Neb. Rev.

Stat. §44-2801, Plaintiff affirmatively waives her right to a panel review and has elected to proceed with her Amended Complaint in the District Court of Lancaster County, Nebraska. Plaintiff has further complied with Neb. Rev. Stat. §44-2801, et seq. by mailing a copy of this Amended Complaint, via certified mail, to the Department of Insurance for the State of Nebraska.

16. On May 31, 2011, Ruby C. Tucker was seen by Albert J. Halls, M.D. at the People's Health Center with complaints of lumps and pain in her right breast. Following this examination Albert J. Halls ordered a diagnostic mammogram and ultrasound.

17. On June 2, 2011, Ruby C. Tucker had both a mammogram and ultrasound done at Bryan LGH Medical Center. These examinations were read and signed by Jeffrey D. Matthes, M.D. and showed multiple large dense cysts. Following these examinations Jeffrey D. Matthes, M.D. recommended "additional imaging evaluation", "clinical correlation" and "repeat ultrasound after treatment..."

18. Ruby C. Tucker was seen and evaluated again by Albert J. Halls, M.D. at the People's Health Center in the weeks following the mammogram and ultrasound, more specifically on June 9, 2011 and August 29, 2011, and there was no mention or discussion of any additional treatment, imaging or clinical correlation during these visits.

19. On October 7, 2011, Ruby C. Tucker was seen again by Albert J. Halls, M.D. at the People's Health Center with complaints of right breast pain and blood leaking from her nipple. Following this visit, Albert J. Halls, M.D. referred Ruby C. Tucker to Carolyn S. Cody, M.D.

20. Ruby C. Tucker was seen by Carolyn S. Cody, M.D. at the Lincoln Breast Center on October 18, 2011 with continued pain in right breast and bloody nipple discharge. Following

her examination, Carolyn S. Cody, M.D. was "reasonably certain" Ruby C. Tucker had cancer and ordered an ultrasound and a mammographically guided biopsy to determine the extent and location of the cancer.

21. Ruby C. Tucker underwent a Right W-US breast Unitlat on October 18, 2011. The ultrasound was performed by Donald H. Breit, M.D. and his impression was "areas of abnormal altered echogenicity within the right breast. The dominant nodule within the 7o'clock position, as well is the area of altered echogenicity within the subareolar right breast immediately superior to the nipple, will be sampled to further evaluate....BI-RADS 4: Suspicious abnormality."

22. On that same date, October 18, 2011, also at the request of Carloyn S. Cody, a W-US Guided Breast BX Right was performed by Donald H. Breit, M.D..

23. The Surgical Pathology Report of the above referenced biopsy, as read by Patrick A. Keelan, M.D. on October 18, 2011, came back with a final diagnosis of "A. Right Breast Tissue by Nipple, Ultrasound-Guided Core Biopsies: 1. Blood and stromal tissue identified. 2. No atypical hyperplasia or malignancy identified. B. Right Breast Tissue at 12:00, Ultrasound-Guided Coire Biopsies: 1. Nonproliferative fibrocystic diseass change. 2. No atypical hyperplasia or malignancy identified."

24. At the bottom of the above referenced October 18, 2011 Surgical Pathology Report is a stamped note stating that Carolyn Cody, M.D. reviewed the biopsy and checked it as "normal" with a follow-up of "6 mo mammo."

25. On November 4, 2011 Carolyn S. Cody, M.D. wrote a letter to Albert J. Halls, M.D. advising him of the mammogram and ultrasound results stating, "I am pleased to see that this showed only fibrocystic change with no evidence of any tumor.....I recommend a yearly

mammogram and follow up. I will review the six month mammogram when it is done in April of next year.”

26. On February 12, 2012, Ruby C. Tucker was admitted to Bryan LGH emergency room with complaints of abdominal pain and rectal bleeding. Upon evaluation and examination it was determined that Ruby C. Tucker had stage 4 invasive ductal carcinoma of the breast with metastases to the bone, brain and liver.

27. From February 25, 2012 to the present, Ruby C. Tucker has received care and treatment for her metastatic breast cancer, including chemotherapy and radiation therapy, and such treatment is expected to continue.

28. The Defendants were negligent in their care of and treatment of Ruby C. Tucker when they failed to note the presence of malignant masses in her breast on June 2, 2011; in failing to recommend, initiate and follow through with an appropriate plan to confirm or rule out the presence of a malignant mass in Ruby C. Tucker's breast following the June 2, 2011 mammogram and ultrasound; in failing to note the presence of malignant masses in Ruby C. Tucker's breast on October 18, 2011; and in failing to follow through with an appropriate plan to definitively rule out breast cancer following the October 18, 2011 mammogram and ultrasound.

29. That as a direct and proximate result of the Defendants' failure to identify the presence of cancer, Ruby C. Tucker was denied the opportunity for early detection and timely and aggressive treatment.

30. That as further direct and proximate result of the negligent acts and omissions of the Defendants, Ruby C. Tucker has sustained the following damages:

- a. Medical bills in the past, and it is reasonably certain that she will sustain medical bills in the future for an indefinite period of time;

- b. Physical pain and mental suffering in the past, and it is reasonably certain that she will sustain additional physical pain and mental suffering in the future;
- c. Loss of wages in the past, and it is reasonably certain that she will sustain loss of wages for an indefinite period of time in the future.
- d. Permanent injury;
- e. Permanent disability; and
- f. Decreased life expectancy.

31. That at the time of the negligence alleged herein, Ruby C. Tucker was 51 years of age with a date of birth of July 8, 1959.

WHEREFORE Plaintiff prays for judgment against the Defendants for her general and special damages, and such other relief as may be allowed by the laws of the State of Nebraska.

DATED this 16th of October, 2013.

RUBY C. TUCKER, Plaintiff,



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